

A U S T I N C I T Y C O U N C I L
AGENDA

Thursday, November 02, 2006

 + [Back](#) [Print](#)**Public Hearings and Possible Actions
RECOMMENDATION FOR COUNCIL ACTION****ITEM No. 64**

Subject: Conduct a public hearing and consider a floodplain variance requested by Louis Williams III and Andrea Williams to allow construction of an addition to the residence at 8312 Millway Drive, Austin, TX, in the 100-year and 25-year floodplains of Shoal Creek and to waive the requirement to dedicate a drainage easement to the full limit of the 100-year floodplain by deleting the footprint of the residence from the easement-dedication requirement

Additional Backup Material

(click to open)

- [Staff Report](#)
- [site location map](#)
- [Ordinance](#)

For More Information: Ray Windsor, 974-3362; Gary M. Kosut, P.E., 974-3374, George E. Oswald, P.E., 974-3369

Mr. Louis Williams III and Ms. Andrea Williams through their agent, Mr. Garrett S. Quinn, propose to enlarge their residence at 8312 Millway Drive. The proposed addition is the subject of Residential Permit Application Number BP-05-10017RA. The applicant seeks variances to the City of Austin's floodplain management regulations in order to obtain a building permit to construct a 663 sq. ft. addition (including a family room, bedroom and bathroom) to the existing non-conforming single-family house (1442 sq. ft.) and attached garage (403 sq. ft.). The rear of the lot includes the Shoal Creek channel. The existing structure and proposed addition are entirely within the 100-year floodplain of Shoal Creek. The 25-year floodplain crosses the middle of the lot and one corner of the existing building.

**THE WATERSHED PROTECTION AND DEVELOPMENT REVIEW DEPARTMENT
RECOMMENDS APPROVAL OF THIS VARIANCE REQUEST.**

SUMMARY OF FINDINGS

1. THE EXISTING RESIDENCE IS IN THE 100-YEAR AND 25-YEAR FLOODPLAINS OF SHOAL CREEK. The lot is adjacent to Shoal Creek.
2. EMERGENCY RESPONDER ACCESS. For the 100-year flood event the depth of floodwaters is 1.6 feet at the curb line in front of the existing structure. The structure will be surrounded by 0.71 to 0.91 feet of water. These depths are within the upper limit of access by Austin Fire Department fire apparatus.
3. ADDITIONAL OCCUPANCY IN THE FLOODPLAIN. The proposed construction increases the opportunity for human occupancy in the floodplain.
4. HARDSHIP CONDITIONS FOR THE PROPERTY DO NOT EXIST. The proposed construction does not meet Building Code hardship prerequisites for granting a floodplain variance.
5. FINISHED FLOOR ABOVE MINIMUM REQUIRED ELEVATION. The proposed construction *meets* City of Austin minimum elevation requirements (proposed elevation is one-foot above the 100-year floodplain elevation). The proposed construction does not constitute "substantial improvement" which would require elevation of the entire existing structure.
6. FLOODS IN THE VICINITY. The November 16 and 23, 2004 storm events resulted in light to moderate flooding in the upper Shoal Creek watershed. Street and yard flooding was reported in the 7800 block of Shoal Creek Boulevard.

APPLICABLE CODE AND VARIANCES REQUESTED

- I. LDC Section 25-7-92 (Encroachment on Floodplain Prohibited) prohibits construction of a building or parking area in the 25-year floodplain.

VARIANCE REQUESTED: *The applicant requests a variance from LDC Section 25-7-92(A) to allow encroachment of the enlarged structure into the 25-year floodplain.*

- II. LDC Section 25-12-3, (Local Amendment to the Building Code), Appendix G, Section G102.3(1) (Nonconforming Uses) provides that a structure which was lawful before the adoption of the floodplain regulations but does not conform to the floodplain regulations may be continued subject to specific conditions, including:

- (1) No such use shall be expanded, changed, enlarged, or altered in a way which increases its nonconformity.

VARIANCE REQUESTED: *The applicant requests a variance to expand and enlarge an existing, nonconforming structure in the floodplain.*

- III. LDC Section 25-12-3, (Local Amendment to the Building Code), Section 1612.4.3 Means of Egress provides that normal access to a building shall be by direct connection with an area that is a minimum of one foot above the design flood elevation.

VARIANCE REQUESTED: *The applicant requests a variance to Building Code Section 1612.4.3, to allow expansion of the existing structure without normal access by connection with an area that is a minimum of one foot above the design flood elevation. Access to the building from Millway Drive will be within the 100-year floodplain with a depth of 1.6 feet of water at the curb line in front of the existing structure and .71 feet of water at the front door.*

- IV. LDC Section 25-7-152 (Dedication of Easements and Rights-of-Way) requires that the owner of real property proposed to be developed dedicate to the public an easement or right-of-way for a drainage facility, open or enclosed, and stormwater flow to the limits of the 100-year floodplain.

VARIANCE REQUESTED: *The applicant requests a variance to exclude the footprint of the enlarged structure from the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain.*

- V. LDC Section 25-7-2, Obstruction of Waterways Prohibited prohibits the placement of an obstruction in a waterway.

VARIANCE REQUESTED: *The applicant requests a variance to place an addition (an obstruction to flow of floodwaters) to an existing structure in a waterway.*

PREREQUISITES FOR GRANTING VARIANCES AND FINDINGS:

Per LDC Section 25-12-3, Technical Codes, Section G 105 Variances, variances shall only be issued upon an affirmative finding of the five conditions described below:

PREREQUISITE

1.) A technical showing of good and sufficient cause based on the unique characteristics of the size, configuration or topography of the site.

Insufficient causes for issuing a variance may include the following:

- *Less than a drastic depreciation of property.*

FINDING

1.) **CONDITION IS NOT MET.** The entire lot is in the 100-year floodplain and is partially within the 25-year floodplain. No unique site size, configuration or topography characteristics have been demonstrated.

- *Convenience of property owner.*
- *Circumstances of owner not land.*
- *To obtain better financial return.*
- *Property similar to others in neighborhood.*
- *Hardship created by owner's own actions.*

2.) A determination that failure to grant the variance would result in exceptional hardship by rendering the lot undevelopable;

The location of the floodplain on the property is a characteristic of the land. Hardship refers to the effect of the floodplain status of the land on its use; it does not refer to personal or financial circumstances of the current owner of the land. In fact financial hardship, inconvenience, aesthetic considerations, physical handicaps, personal preferences or the disapproval of one's neighbors do not qualify as exceptional hardships. FEMA advises that the reasons for granting floodplain management variances must be substantial and the proof compelling. The claimed hardship must be exceptional, unusual and peculiar to the property involved.

3.) A determination that granting of a variance would not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing laws or conflict with existing laws or ordinances.

4.) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

Relief is defined as respite from unnecessary hardship. Unnecessary hardship is defined as:

- *Loss of all beneficial or productive use.*
- *Deprivation of reasonable return on*

2.) **CONDITION IS NOT MET.** Failure to grant the proposed variance will not render the lot undevelopable. The lot has been developed and is currently capable of producing income and serving as a residence without the proposed addition.

3.) **CONDITION IS SUBSTANTIALLY MET.** The proposed addition will not increase floodplain water-surface elevations. The approval of this variance request will, however, increase public safety threat and increase public expense because more occupants will be allowed in harm's way. Risk from flood waters due to evacuation or rescue attempts by first responders should be minimal.

4.) **NOT MET.** Relief is defined as relief from exceptional hardship. In this case, there is no exceptional hardship. The owners currently have use of their property as a primary residence. No relief to the situation is required. The property is currently developed.

property.

- *Deprivation of all or any reasonable use.*
- *Rendering property valueless.*
- *Inability to develop property in compliance with the regulations.*
- *Reasonable use cannot be made consistent with the regulation.*

5.) Notification to the applicant in writing over the signature of the building official that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance, and that such construction below the base flood level increases risks to life and property.

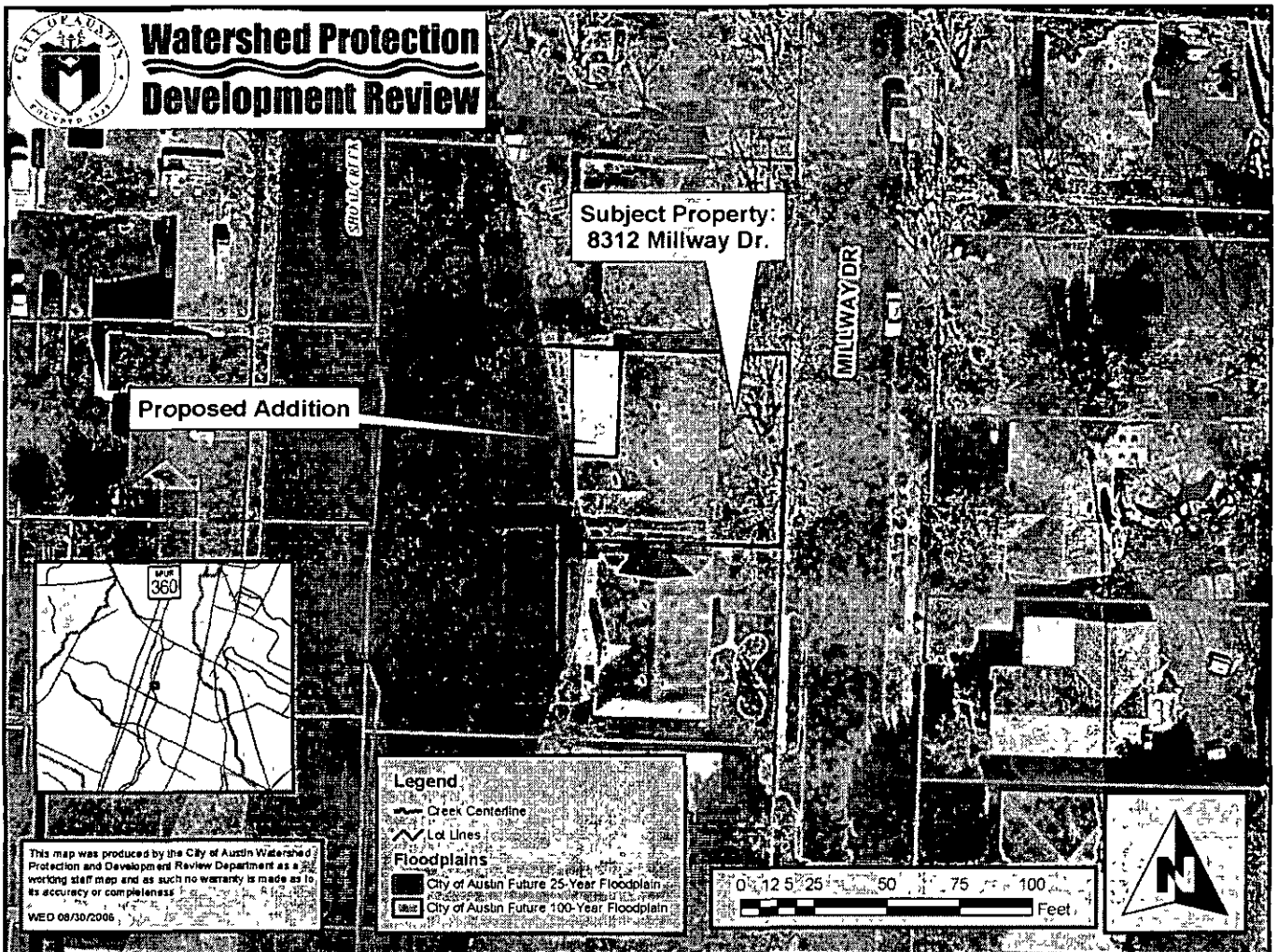
5.) **CONDITION IS N/A.** The finished floor of the existing structure and proposed addition are/will be above the 100-year floodplain elevation.

VARIANCE CONDITIONS

In the event that the variance request is granted, the variance is effective only upon the satisfaction of the following conditions:

1. The applicant shall submit a completed Elevation Certificate certifying the elevation of the finished floor of the addition, signed by a Texas registered professional land surveyor, before the City may issue a Certificate of Occupancy for the proposed structure.
2. The applicant must provide a certification by a Texas Registered Professional Engineer or Architect certifying that the proposed addition will withstand the flood forces generated by the 100-year flood and that the design and construction is in accord with the latest edition of the American Society of Engineers Manual 24 (Flood Resistant Design and Construction).

Site Location Map with Floodplains for 8312 Millway Drive



ORDINANCE NO.

AN ORDINANCE GRANTING VARIANCES FOR PROPERTY LOCATED AT 8312 MILLWAY DRIVE FROM CERTAIN FLOODPLAIN REGULATIONS PRESCRIBED BY THE CITY CODE FOR CONSTRUCTION OF A DUPLEX IN THE 25 AND 100-YEAR FLOODPLAINS, AND PROVIDING AN EXPIRATION DATE FOR THE VARIANCES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. This ordinance applies to an addition to an existing residence at 8312 Millway Drive within the 25 and 100-year floodplains subject to Building Permit Application No. BP-05-11017RA.

PART 2. Council has considered the factors for granting a variance from floodplain regulations prescribed by City Code Section 25-12-3, Building Code Appendix G, Section G105.7 (*Conditions for Issuance*). Council finds that the variance granted by this ordinance is the minimum necessary to afford relief, is based on good and sufficient cause, and failure to grant the variance would result in exceptional hardship. Council further finds that the variance granted in this ordinance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, or create a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

PART 3. A variance is granted from:

- (A) the restriction on construction in the 25 and 100-year floodplains prescribed by City Code Section 25-7-92 (*Encroachment On Floodplain Prohibited*);
- (B) the easement requirement in City Code Section 25-7-152 (*Dedication of Easements and Rights-of-Way*) to exclude the residence from the requirement to dedicate an easement to the limits of the 25 and 100-year floodplain; provided that the applicant dedicate an easement as required by 25-7-152 for that portion of the property for which a variance is not granted.
- (C) the prohibition against expanding, changing, enlarging, or altering a structure in a way which increases its nonconformity prescribed by City Code Section 25-12-3, Building Code Appendix G, Section G102.3(1) (*Nonconforming Uses*).
- (D) the prohibition against placing an obstruction in a waterway prescribed by City Code Section 25-7-2 (*Obstruction of Waterways Prohibited*).

1 (E) the requirement that normal access to the building be by direct connection
2 with an area at least one foot above the design flood elevation prescribed by
3 City Code Section 25-12-3, Building Code Section 1612.4.3 (*Means of*
4 *Egress*).

5 **PART 4.** If the project for which this variance is granted does not receive all necessary
6 building permits before November 2, 2007, this variance expires.

7 **PART 5.** Approval of this variance does not constitute approval of zoning, subdivision,
8 a site plan, a building permit, or any other development permit, and it does not constitute
9 a commitment to any particular land use, intensity of land use, or utility services.
10 Approval of this variance does not constitute a guarantee of flood insurance availability,
11 rates, or requirements.

12 **PART 6.** This ordinance takes effect on _____, 2006.

13
14 **PASSED AND APPROVED**

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16
17
18 _____, 2006

19 Will Wynn
20 Mayor

21
22
23 **APPROVED:**

24 David Allan Smith
25 City Attorney

26 **ATTEST:**

27 Shirley A. Gentry
28 City Clerk